

Resolving disputes in incorporated associations (NSW)

Legal information for NSW incorporated associations

This fact sheet covers:

- ▶ following a dispute resolution procedure
- ▶ the kinds of internal disputes a NSW incorporated association may go to court about, and
- ▶ what happens if legal action is taken against your incorporated association

This fact sheet is relevant to NSW incorporated associations. If your community organisation has another legal structure, this fact sheet does not cover your circumstances.

For some types of internal disputes, a NSW incorporated association may go to court to resolve the dispute as a last resort.

Taking court action is stressful, time consuming, and is often very expensive. Generally, court action can only be considered when all other efforts to resolve a dispute have failed.

Courts have also shown that they are generally reluctant to interfere in the internal affairs of community organisations. It's therefore sensible to try to resolve all disputes through negotiation or mediation.

Disclaimer

This fact sheet provides general information for NSW incorporated associations about resolving internal disputes. This information is intended as a guide only and is not legal advice. If you or your organisation has a specific legal issue, you should seek legal advice before deciding what to do.

Please refer to [the full disclaimer](#) that applies to this fact sheet.

An association

An incorporated association has a separate legal identity from its members.

The *Associations Incorporations Act 2009* (NSW) (**AI Act**) states that in NSW, 'association' means an association that is registered under the AI Act.

What is an internal dispute?

An internal dispute is a dispute or conflict between the people who are bound by the rules of the incorporated association (ie. members and the committee).

Common internal disputes can arise between:

- two or more members of the association, and
- one or more members and the association

There may be other situations where disputes can arise.

Which dispute resolution procedure applies?

When trying to resolve an internal dispute, your association must observe:

- the legal requirements under the AI Act, and
- your association's constitution (the written document that sets out how the association is governed)

Under the AI Act, a mechanism for resolving disputes must be included in the constitution of every incorporated association. If your association's constitution does not include a mechanism for resolving disputes, the procedure outlined in the model constitution will apply.

The mechanism for resolving disputes must cover disputes between members and disputes between a member and the association itself (**note** – this does not apply to disputes between a member and the committee or disputes among committee members).



Model constitution

The model constitution is set out in Schedule 3 of the [Associations Incorporation Regulation 2022 \(NSW\) \(AI Regulation\)](#) and published on the [NSW Fair Trading website](#).

Your association can choose to use the model constitution or write its own constitution. If your association writes its own constitution and it does not address a matter in the model constitution, the terms of the model constitution apply.

An incorporated association may not adopt a dispute resolution process that expressly removes the jurisdiction of the court. Such a rule will be deemed invalid as contrary to public policy.



If your dispute is an external dispute (for example between your association and a client or a member of the public), see [our webpage on handling disputes and conflicts](#).



Caution

Applying to court may exacerbate tension and adversely affect relationships in your incorporated association. It should be avoided if you have any alternatives. Don't go to court unless you have considered the risks very carefully and sought legal advice.

**Before going to court, you generally must try to resolve the dispute using:**

- your association's dispute resolution procedures
- your association's disciplinary procedures (if any) to discipline or remove a troublesome member or committee member, or
- negotiation or mediation

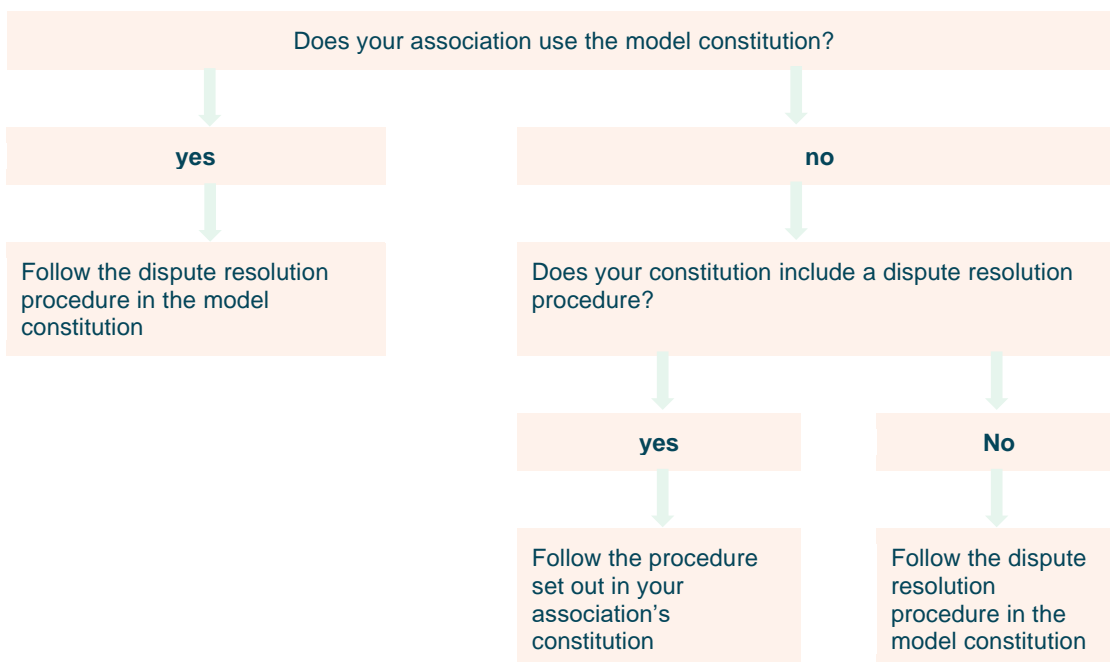
If the model constitution applies, the dispute must be referred to a Community Justice Centre for mediation. If the dispute is not resolved within three months, the dispute must then be referred to arbitration. There are particular legal requirements for arbitration. Depending on the state or territory your dispute arises in, the rules for arbitration may differ, so you should seek legal advice if your organisation finds itself in this situation.



Community Justice Centres offer free mediation services in New South Wales. For more information about the free mediation service, go to the [NSW Community Justice Centres website](#).



For more information, see [our webpage on disputes with members](#) and [our webpage on using mediation to resolve conflicts and disputes](#).

Use this flow chart to work out which dispute resolution procedure applies:**If the model constitution applies, the process is as follows:**

- the dispute must be referred to a Community Justice Centre for mediation
- the appointed mediator will not determine the dispute, but must give each party a fair and equal opportunity to be heard and should assist the parties in attempting to reach a negotiated outcome
- if the dispute is not resolved by mediation within three months of being referred to the Community Justice Centre, the dispute must be referred to arbitration, and
- if the alternative methods of dispute resolution do not resolve the dispute the parties may then use other legal processes to attempt to resolve the dispute (for example, court action)

Which internal disputes can be taken to court?

The AI Act does not provide for court action arising from escalated internal disputes and NSW Fair Trading doesn't have jurisdiction to intervene in internal affairs or resolve disputes of incorporated associations.

It's possible to bring an action in Court. However, this should be considered as a last resort and in many cases, will only be possible after the dispute resolution process set out in the association's constitution has been completed.



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Note

This fact sheet provides information about internal disputes and does not cover:

- other types of court actions that may be available in certain circumstances such as breach of contract, discrimination and negligence, or
- potential criminal and civil consequences of a community organisation breaching the IA Act, for example by way of fraud or dishonest use of position

Compliance with the association's constitution and purpose

The association's constitution and purposes

A committee is appointed to act on behalf of the association.

The functions of the committee are:

- to control and manage the affairs of the association
- to exercise all the functions that may be exercised by the association, other than a function that is required to be exercised by the association in a general meeting, and
- to do all things necessary or convenient to be done for the proper management of the affairs of the association

An association's constitution can restrict or prohibit the association's exercise of any of its powers. An act of an association is not invalid merely because it is contrary to or beyond the association's objects.

The committee may take disciplinary action against members who fail to comply with a provision of the constitution or wilfully act in a way prejudicial to the interests of the association.

What can the court do?

Once attempts to resolve the dispute through Community Justice Centres, mediation and/or arbitration have been exhausted, proceedings for an offence under the AI Act (for example, dishonest use of information) may be dealt with by the Local Court.



Winding up orders

The association, a member or a creditor of the association may apply to the Supreme Court requesting that the association be wound up if the association has:

- conducted its affairs (including its affairs as trustee of any trust) so as to provide pecuniary gain for its members
- engaged in activities inconsistent with its objects
- acted in the interests of the committee or its members, rather than in accordance with its objects
- acted in any manner that appears to the court to be unfair or unjust to the association's members, or
- the court is otherwise of the opinion that it is just and equitable for the association to be wound up

An association may also be wound up voluntarily by special resolution.



Remember

Even court applications that seem simple or straightforward can become expensive and lengthy. If you lose your court action, the court may order you to pay the successful party's costs.

However, the court may order a successful party to pay the legal costs of the application if the court thinks that:

- the application was trivial or unreasonable, or
- the unreasonable or improper conduct of a party has caused the application or added to the cost of proceedings

What if a member takes your association to court?

If your organisation receives a letter or court document about a 'legal action', seek legal advice immediately because sometimes time limits apply in relation to defending legal actions. It is important to review the association's constitution to know the procedures set out for handling internal disputes.



For more information, go to [our webpage on handling disputes and conflicts](#), which includes fact sheets on being taken to court and responding to a subpoena.

How do you know if court action is being taken about an internal dispute?

There are a number of ways your association may find out about legal action arising from an internal dispute.

Letter

Your association may receive a letter demanding that you do something (for example, pay money) or stop doing something (for example, holding a meeting).

The letter may threaten legal action if your association doesn't comply with the demand. Similar threats may be made in person or over the phone.

A letter (or call) threatening legal action does not mean that the person who wrote the letter will take legal action. However, you should seek legal advice about the likelihood of the legal action occurring and what defences your association may have.

Also see the comments below regarding steps to take if a member takes action.

**Statement of claim or summons**

Your association may receive a legal document, generally by way of a Statement of Claim or Summons, when legal proceedings have been formally started. The document must be served on you within six months after it was filed in the Court, although this is reduced to one month if the proceedings have been started in the District Court (unless the defendant is outside New South Wales).

What should you do if a member takes legal action against your association over an internal dispute?**Seek legal advice**

Seek legal advice on the most appropriate course of action for your association and what defences it may have.

Make sure the right people know

Your committee should be informed, but there may be reasons (for example, privacy reasons) why you should not inform all staff or volunteers about a legal action. Check this with your lawyer.

Notify your insurer

Check your insurance policies cover legal action and notify your insurer immediately, if you have one. If you don't have an insurer, you may wish to speak with your insurance broker or a legal expert about your insurance needs.

What time limits apply?

Most proceedings for offences under the AI Act may be started no later than six months from when the offence was alleged to have been committed.

Can your incorporated association be required to pay legal costs?

Yes. Incorporated associations have the legal capacity and powers of individuals and are therefore treated in the same way as any other plaintiff or defendant in legal proceedings.

Generally, costs are awarded against the party who loses the case (which means the losing party needs to pay their own court costs as well as some of the costs of the party who won). The amount of costs payable to the other side depends on several factors. You should seek legal advice at the beginning of any dispute for information about costs.

Doesn't being an incorporated association mean people can't take us to court?

No. Just because your association is incorporated doesn't mean people can't take legal action against your organisation.

The benefit of 'limited liability' that comes with incorporation, is that committee members of the association are generally not personally liable for debts and liabilities of the association, including legal costs, provided the actions or omissions of the committee member are done in good faith.

Limited liability does **not** mean that your association is immune to legal action.



For more information on limited liability and the responsibilities of board members, see [our webpage on responsibilities of the board and committee members](#).